

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

MOLDEX-METRIC, INC.,

Plaintiff,

vs.

3M COMPANY and 3M INNOVATIVE
PROPERTIES COMPANY,

Defendants.

Civil No. 14-1821 (JNE/FLN)

**DECLARATION OF
MATTHEW HOSEN
IN SUPPORT OF MOLDEX'S
MOTION TO AMEND ITS
COMPLAINT**

I, MATTHEW HOSEN, hereby declare and state as follows:

1. I am an attorney with the law firm of Quinn Emanuel Urquhart & Sullivan, LLP, admitted *Pro Hac Vice*, representing Plaintiff Moldex-Metric, Inc. ("Moldex") in this action.

2. This Declaration is submitted, under penalty of perjury, in connection with Moldex's Motion to Amend Its Complaint. In accordance with 28 U.S.C. Sec. 1746, I intend this Declaration to have the same binding legal effect as an affidavit signed by me. The materials that are either referenced in or attached to this Declaration relate to Moldex's requests to add as part of its averments a claim for punitive damages and broader averments under Moldex's antitrust and false advertising claims.

3. Attached as Exhibit 1 is a true and correct copy of a redlined version comparing the existing Moldex Complaint (Docket No 1) to Moldex's proposed First Amended Complaint. (FILED UNDER SEAL)

4. When the parties and the Court met in March 2015 for a Rule 16 Scheduling Conference, there were competing proposals for when to set the date for bringing motions to amend. Attached as Exhibit 2 is a copy of the parties' joint Rule 26(f) Report, filed with the Court on March 20, 2015, as Docket No. 66. At that time, Moldex sought a December 31, 2015 deadline for filing motions to amend the pleadings (coming at the end of fact discovery proposed by Moldex). 3M proposed an April 2015 deadline. The Court set that motion to amend deadline for July 1, 2015.

5. Moldex served its first and second sets of document requests on 3M on February 20, and April 8, 2015, respectively. Attached as Exhibits 3 and 4 are true and correct copies of 3M's responses and objections to Moldex's first and second sets of document requests. 3M refused to produce several categories of documents responsive to Moldex's requests. In order to obtain such documents, Moldex brought a motion to compel against 3M on May 15, 2015, which was heard on June 1, 2015. The Court took the matter under advisement and then granted Moldex's motion to compel in an Order dated July 8, 2015. 3M did not produce any new documents sought by Moldex in this case until after July 1, 2015. Set forth below is a table compiled as part of this lawsuit of the production dates and corresponding range of Bates numbers of the documents produced by 3M to Moldex in this case:

Date Produced	Bates Ranges
7/30/2015	3M00080310-3M00113401
7/31/2015	3M00113402-3M00139883
8/4/2015	3M00139884-3M00156515
8/5/2015	3M00156516-3M00156637
9/9/2015	3M00156638-3M00166651

9/17/2015	3M00166652-3M00167864
10/19/2015	3M00167865-3M00168471
10/19/2015	3M00168472-3M00169160

Also, 3M did not produce its Privilege Log until September 8, 2015. By way of example, what is referred to in Moldex's current motion as the 3M "Flange Report," marked as 3M00116386-91, was not produced to Moldex until 30 days after the Court-imposed July 1 deadline for bringing motions to amend. Attached hereto as Exhibit 5 is a true and correct copy of the "Flange Report." (FILED UNDER SEAL)

6. Attached as Exhibit 6 is a true and correct copy of a letter sent by counsel for Moldex to counsel for 3M requesting deposition dates for 3M witnesses, dated June 30, 2015. The first deposition of a 3M witness was not until September 29, 2015.

7. SourceAmerica produced documents in response to Moldex's subpoena on September 18, 2015.

8. New Dynamics produced its documents in response to Moldex's subpoenas on August 14, 2015.

9. Attached hereto as Exhibit 7 is a true and correct copy of relevant pages from the transcript of Elliot Berger's October 8, 2015 deposition testimony in this action. (FILED UNDER SEAL)

10. Attached hereto as Exhibit 8 is a true and correct copy of relevant pages from the transcript of Julie Bushman's October 20, 2015 deposition testimony in this action. (FILED UNDER SEAL)

11. Attached hereto as Exhibit 9 is a true and correct copy of relevant pages from the transcript of Jeffrey Hamer's October 7, 2015 deposition testimony in this action. (FILED UNDER SEAL)

12. Attached hereto as Exhibit 10 is a true and correct copy of relevant pages from the transcript of Ronald Kieper's October 9, 2015 deposition testimony in this action. (FILED UNDER SEAL)

13. Attached hereto as Exhibit 11 is a true and correct copy of relevant pages from the transcript of James Hornstein's September 25, 2015 deposition testimony in this action. (FILED UNDER SEAL)

14. Attached hereto as Exhibit 12 is a true and correct copy of relevant pages from the transcript of Eric Levinson's September 30, 2015 deposition testimony in this action. (FILED UNDER SEAL)

15. Attached hereto as Exhibit 13 is a true and correct copy of relevant pages from the transcript of Mark Magidson's October 6, 2015 deposition testimony in this action. (FILED UNDER SEAL)

16. Attached hereto as Exhibit 14 is a true and correct copy of relevant pages from the transcript of Douglas Moses' October 21, 2015 deposition testimony in this action. (FILED UNDER SEAL)

17. Attached hereto as Exhibit 15 is a true and correct copy of relevant pages from the transcript of Brian Myers' September 29, 2015 deposition testimony in this action. (FILED UNDER SEAL)

18. Attached hereto as Exhibit 16 is a true and correct copy of relevant pages from the transcript of Walter C. Pawlowski's October 23, 2015 deposition testimony in this action. (FILED UNDER SEAL)

19. Attached as Exhibit 17 is a true and correct copy of an email from Douglas Moses to Mike Cimino dated November 21, 2011, bearing production control numbers 3M00140526-29 (FILED UNDER SEAL)

20. Attached hereto as Exhibit 18 is a true and correct copy of an email string between Douglas Moses and Mike Cimino dated April 13, 2012, bearing production control numbers 3M00031727-29. (FILED UNDER SEAL).

21. Attached as Exhibit 19 is a true and correct copy of 3M's Complaint in 3M's prior patent lawsuit against Moldex (12-cv-00611) ("3M's Patent Lawsuit"), dated March 8, 2012.

22. Attached as Exhibit 20 is a true and correct copy of 3M's Motion to Dismiss the '693 Claim in 3M's Patent Lawsuit, ECF No. 60, dated March 29, 2013.

23. Attached as Exhibit 21 are true and correct copies of an e-mail exchange between Eileen Hunter and Kevin Conneely dated November 2, 2015, and an e-mail exchange between Katie Moerke and Eileen Hunter dated November 4, 2015.

24. Attached hereto as Exhibit 5004 is a true and correct copy of what has been marked as Deposition Exhibit 5004, bearing production control numbers 3M00128411-15. (FILED UNDER SEAL)

25. Attached hereto as Exhibit 5005 is a true and correct copy of what has been marked as Deposition Exhibit 5005, bearing production control numbers 3M00103034-58. (FILED UNDER SEAL)

26. Attached hereto as Exhibit 5006 is a true and correct copy of what has been marked as Deposition Exhibit 5006, is United States Patent No. 7,036,157.

27. Attached hereto as Exhibit 5014 is a true and correct copy of what has been marked as Deposition Exhibit 5014, is United States Patent No. 6,070,693.

28. Attached hereto as Exhibit 5105 is a true and correct copy of a 3M brochure entitled "Combat Arms Earplugs."

29. Attached hereto as Exhibit 5110 is a true and correct copy of what has been marked as Deposition Exhibit 5110, bearing production control numbers 3M00103112-125. (FILED UNDER SEAL)

30. Attached hereto as Exhibit 5122 is a true and correct copy of what has been marked as Deposition Exhibit 5122, bearing production control numbers 3M00119327-29, except the last six pages have no numbers. (FILED UNDER SEAL)

31. Attached hereto as Exhibit 5124 is a true and correct copy of what has been marked as Deposition Exhibit 5124, bearing production control numbers 3M00120238-40, except the last six pages have no numbers. (FILED UNDER SEAL)

32. Attached hereto as Exhibit 5201 is a true and correct copy of what has been marked as Deposition Exhibit 5201, bearing production control numbers 3M0089315-373. (FILED UNDER SEAL)

33. Attached hereto as Exhibit 5205 is a true and correct copy of what has been marked as Deposition Exhibit 5205, bearing production control numbers 3M00157891-905, except for the first five pages which have no control numbers. (FILED UNDER SEAL)

34. Attached hereto as Exhibit 5224 is a true and correct copy of a portion of what has been marked as Deposition Exhibit 5224, bearing production control numbers 3M00084184-216, 3M00077339-42, 3M00118127-28, 3M00103034-58, 3M00128411-15. (FILED UNDER SEAL)

35. Attached hereto as Exhibit 5301 is a true and correct copy of what has been marked as Deposition Exhibit 5301.

36. Attached hereto as Exhibit 5304 is a true and correct copy of what has been marked as Deposition Exhibit 5304, bearing production control numbers 3M00101316-17. (FILED UNDER SEAL)

37. Attached hereto as Exhibit 5305 is a true and correct copy of what has been marked as Deposition Exhibit 5305.

38. Attached hereto as Exhibit 5501 is a true and correct copy of what has been marked as Deposition Exhibit 5501, bearing production control numbers 3M00116929-30. (FILED UNDER SEAL)

39. Attached hereto as Exhibit 5502 is a true and correct copy of what has been marked as Deposition Exhibit 5502, bearing production control numbers Moldex00078737. (FILED UNDER SEAL)

40. Attached hereto as Exhibit 5503 is a true and correct copy of what has been marked as Deposition Exhibit 5503, bearing production control numbers 3M00168787. (FILED UNDER SEAL)

41. Attached hereto as Exhibit 5601 is a true and correct copy of what has been marked as Deposition Exhibit 5601, bearing production control numbers 3M00117420-21. (FILED UNDER SEAL)

42. Attached hereto as Exhibit 5608 is a true and correct copy of what has been marked as Deposition Exhibit 5608, bearing production control numbers 3M00113683-85. (FILED UNDER SEAL)

43. Attached hereto as Exhibit 5610 is a true and correct copy of what has been marked as Deposition Exhibit 5610, bearing production control numbers 3M00003634-37. (FILED UNDER SEAL)

44. Attached hereto as Exhibit 5611 is a true and correct copy of what has been marked as Deposition Exhibit 5611, bearing production control numbers 3M00035258-60. (FILED UNDER SEAL)

45. Attached hereto as Exhibit 5612 is a true and correct copy of what has been marked as Deposition Exhibit 5612, bearing production control numbers 3M00075817-18. (FILED UNDER SEAL)

46. Attached hereto as Exhibit 5613 is a true and correct copy of what has been marked as Deposition Exhibit 5613, bearing production control numbers 3M00074625-26. (FILED UNDER SEAL)

47. Attached hereto as Exhibit 5614 is a true and correct copy of what has been marked as Deposition Exhibit 5614, bearing production control numbers 3M00076366-84. (FILED UNDER SEAL)

48. Attached hereto as Exhibit 5616 is a true and correct copy of what has been marked as Deposition Exhibit 5616, bearing production control numbers 3M00050226-27. (FILED UNDER SEAL)

49. Attached hereto as Exhibit 5617 is a true and correct copy of what has been marked as Deposition Exhibit 5617, bearing production control numbers 3M00075918-20. (FILED UNDER SEAL)

50. Attached hereto as Exhibit 5618 is a true and correct copy of what has been marked as Deposition Exhibit 5618, bearing production control numbers 3M00075443-46. (FILED UNDER SEAL)

51. Attached hereto as Exhibit 5626 is a true and correct copy of what has been marked as Deposition Exhibit 5626, bearing production control numbers 3M00075927. (FILED UNDER SEAL)

52. Attached hereto as Exhibit 5628 is a true and correct copy of what has been marked as Deposition Exhibit 5628, bearing production control numbers 3M00055864-65. (FILED UNDER SEAL)

53. Attached hereto as Exhibit 5629 is a true and correct copy of what has been marked as Deposition Exhibit 5629, bearing production control numbers 3M00002767-71. (FILED UNDER SEAL)

54. Attached hereto as Exhibit 5630 is a true and correct copy of what has been marked as Deposition Exhibit 5630, bearing production control numbers 3M00140045-47. (FILED UNDER SEAL)

55. Attached hereto as Exhibit 5631 is a true and correct copy of what has been marked as Deposition Exhibit 5631, bearing production control numbers 3M00156781-84. (FILED UNDER SEAL)

56. Attached hereto as Exhibit 5633 is a true and correct copy of what has been marked as Deposition Exhibit 5633, bearing production control numbers 3M00081581-84. (FILED UNDER SEAL)

57. Attached hereto as Exhibit 5637 is a true and correct copy of what has been marked as Deposition Exhibit 5637, bearing production control numbers 3M00056284. (FILED UNDER SEAL)

58. Attached hereto as Exhibit 5645 is a true and correct copy of what has been marked as Deposition Exhibit 5645, bearing production control numbers 3M00083680-85. (FILED UNDER SEAL)

59. Attached hereto as Exhibit 5646 is a true and correct copy of what has been marked as Deposition Exhibit 5646, bearing production control numbers 3M00094755-56. (FILED UNDER SEAL)

60. Attached hereto as Exhibit 5711 is a true and correct copy of what has been marked as Deposition Exhibit 5711, bearing production control numbers 3M00076048-55. (FILED UNDER SEAL)

61. Attached hereto as Exhibit 5719 is a true and correct copy of what has been marked as Deposition Exhibit 5719, bearing production control numbers SourceAmerica 00003511-12. (FILED UNDER SEAL)

62. Attached hereto as Exhibit 5720 is a true and correct copy of what has been marked as Deposition Exhibit 5720, bearing production control numbers Access Records re: Moldex Subpoena 0000622-23.

63. Attached hereto as Exhibit 5634 is a true and correct copy of what has been marked as Deposition Exhibit 5634, bearing production control numbers 3M00156943-44. (FILED UNDER SEAL)

64. Attached hereto as Exhibit 5635 is a true and correct copy of what has been marked as Deposition Exhibit 5635, bearing production control numbers 3M00081600. (FILED UNDER SEAL)

65. Attached hereto as Exhibit 5637 is a true and correct copy of what has been marked as Deposition Exhibit 5637, bearing production control numbers 3M00056284. (FILED UNDER SEAL)

66. Attached hereto as Exhibit 5638 is a true and correct copy of what has been marked as Deposition Exhibit 5638, bearing production control numbers 3M00030022-26. (FILED UNDER SEAL)

67. Attached hereto as Exhibit 5640 is a true and correct copy of what has been marked as Deposition Exhibit 5640, bearing production control numbers 3M00093604-9. (FILED UNDER SEAL)

68. Attached hereto as Exhibit 5641 is a true and correct copy of what has been marked as Deposition Exhibit 5641, bearing production control numbers 3M00030051-56. (FILED UNDER SEAL)

69. Attached hereto as Exhibit 5644 is a true and correct copy of what has been marked as Deposition Exhibit 5644. (FILED UNDER SEAL)

70. Attached hereto as Exhibit 5713 is a true and correct copy of what has been marked as Deposition Exhibit 5713, bearing production control numbers Access Records re Moldex Subpoena 0000832033. (FILED UNDER SEAL)

71. Attached hereto as Exhibit 5714 is a true and correct copy of what has been marked as Deposition Exhibit 5714, bearing production control numbers Access Records re: Moldex Subpoena 0000817. (FILED UNDER SEAL)

72. Attached hereto as Exhibit 5718 is a true and correct copy of what has been marked as Deposition Exhibit 5718, bearing production control numbers Access Records re Moldex Subpoena 0000725-75. (FILED UNDER SEAL)

73. Attached hereto as Exhibit 5719 is a true and correct copy of what has been marked as Deposition Exhibit 5719, bearing production control numbers SourceAmerica00003511-12. (FILED UNDER SEAL)

74. Attached hereto as Exhibit 5721 is a true and correct copy of what has been marked as Deposition Exhibit 5721, bearing production control numbers SourceAmerica00003405-7. (FILED UNDER SEAL)

75. Attached hereto as Exhibit 5728 is a true and correct copy of what has been marked as Deposition Exhibit 5728, bearing production control numbers 3M00092696-99. (FILED UNDER SEAL)

76. Attached hereto as Exhibit 5736 is a true and correct copy of what has been marked as Deposition Exhibit 5736, bearing production control numbers 3M00083449-51. (FILED UNDER SEAL)

77. Attached hereto as Exhibit 5737 is a true and correct copy of what has been marked as Deposition Exhibit 5737, bearing production control numbers Access Records re Moldex Subpoena 0000613-14. (FILED UNDER SEAL)

I DECLARE, UNDER PENALTY OF PERJURY, THAT THE FOREGOING STATEMENTS ARE TRUE AND CORRECT.

Executed on: November 16, 2015

s/ Matthew Hosen

Matthew Hosen